No. 88-1503

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

NANCY BETH CRUZAN, BY HER PARENTS AND CO-GUARDIANS, LESTER L. AND JOYCE CRUZAN,

Petitioners,

v.

DIRECTOR OF MISSOURI DEPARTMENT OF HEALTH, AND ADMINISTRATOR OF THE MISSOURI REHABILITATION CENTER AT MT. VERNON,

Respondents,

v.

THAD C. MCCANSE, GUARDIAN AD LITEM,

Respondent,

On Writ of Certiorari to the Missouri Supreme Court

BRIEF OF HERBERT RATNER, M.D. AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

ROBERT L. SASSONE
Attorney at Law
900 North Broadway • Suite 725
Santa Ana, California 92701
(714) 547-5611

EDITOR'S NOTE:

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MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE ON BEHALF OF RESPONDENT

Amicus hereby respectfully moves for leave to file a brief amicus curiae in the present case. Requested consent of parties is expected but has not yet been received and filed. When filed, it will make this motion unnecessary.

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INTEREST OF AMICUS

Herbert Ratner, MD, public health specialist, is well past eighty. In addition to the typical background of a medical doctor, he has been a professor at University of Michigan and University of Chicago Medical Schools, and has been public health director of a city. Dr Ratner founded, along with some of his patients La Leche league, which has repopularized nursing babies over the early opposition of nearly the entire medical establishment, which of course included the predecessors of those who dominate certain of the health care organizations filing briefs on the other side of this case. In addition, he has opposed the same establishment and seen them proven wrong (although not as the leader of the revolution as in the case of La Leche) in their advocacy of

unnatural childbirth where they advocated (for years in opposition to nearly all observed facts) the contention that during childbirth, the only good mother was a thoroughly doped up mother who would suffer from the anesthesia for days afterwards and blame her suffering on childbirth rather than her physician. Perhaps most important, he had the opportunity to live through and observe the entire Nazi period. As a Jew, he was motivated to study it. He publishes <u>Child and Family Magazine</u>. He believes that physicians are capable of being influenced by many of the same emotions, political winds, trendy propaganda, etc of the rest of us. When they leave the particular area of their specialized expertise, they can err. In certain areas, ie herein, because of their background, they are more likely to err.

SUMMARY OF ARGUMENT

Should this Court reverse because the AMA and certain other medical groups favor reversal? No more than military policy should be dominated by the military. Of course, its position is worthy of consideration, but because of the complexity of medicine, my profession has an inglorious record of being wrong for the wrong reasons. A partial list of famous errors in the 1800s includes bleeding, leaches and unsanitary birth conditions. Major examples since 1970 include nursing babies and natural childbirth. When medical issues become public issues such as in this case or the abortion situation, a medical association becomes a political prize to be fought over like any other source of political power with similar political, not scientific weapons.

A century earlier, the AMA led the fight to stop abortion based on the scientific fact that human life began at conception. Recently, the AMA led the fight to restart abortion based on the claim that human life did not begin at conception. Why? It was not science that caused the change. The average physician, particularly if he or she has a family, expends so much effort becoming a physician that he or she has little energy left for medical associations which are left to the control of the highly politically motivated who have vast amounts of free time. The highly politically motivated are likely to be so because they are emotionally disposed toward change. If there is no change, they are wasting their time. Those who oppose an important, dominant political philosophy have little chance to advance

along the chairs to high AMA office, so the AMA gets locked into positions.

A good test for this Court to use to determine whether a scientific lobbying organization's position is really based on science or just reflects the political whims of those in power in the organization is legislation. Legislatures have more time and better investigative powers than this Court. How many states have been sufficiently impressed with the scientific reasons behind the organization's position to enact laws enforcing that position? The proof in this case that the AMA et al position is not sufficiently based on medical science to be given great weight by this Court is the fact that in spite of medical association lobbying no state has enacted legislation legalizing any order similar to that sought herein by petitioners.

ARGUMENT

If this case involved just a medical question, the very busy Justice might be tempted to not even read amicus briefs for respondents, reasoning that since the AMA et al want reversal, that settles the matter. But this is far more than a mere medical question. It is worthy of note that the briefs in support of reversal came from those who will get to play God. The alleged beneficiaries who will actually have the right to euthanasia used on them, such as associations of the retarded and inhabitants of nursing homes, etc. are conspicuous by their absence. It should be noted, for example, that amicus "AIDS Civil Rights Project is a subdivision of National Gay Rights Advocates" [their brief, p 1], and not an organization of people with AIDS who are about to die and

are pounding on the doors of this Court for Euthanasia.

Physicians who consider this matter are divided just like every other class of society. When they express opinions on a matter having such serious religious, ethical, historical, political, moral and other overtones as this case does, their opinions may be based substantially on personal philosophy, fad, media, and other factors as well as medical science. Their opinions on non medical or mixed medical topics may be no better than the opinion of the intelligent scientist discussing politics. [And how do the political opinions of Albert Einstein, look in retrospect?]

If the result they seek is so obviously good and constitutional, it is peculiar that much of the media, the pro reversal part of the medical

establishment, the organizations deriving from the euthanasia societies which have changed their names because of the public dislike and bad connotation (to kill) of the word euthanasia and their allies who are so strongly urging that Nancy Cruzan be starved to death to protect her rights and dignity have not been able to convince any legislature to pass any law remotely resembling the general rule necessary if the present case is to be reversed. If one made a scale from one to 100, and called the general rule necessary for reversal 100, most states might be around zero and the closest states might be around ten. They know this, and mindful of the abortion precedent are putting their efforts into this Court rather than the legislatures where such effort would be futile because of widespread deep rooted opposition to

breaching the line protecting the innocent from being killed.

To reverse, this Court must rely not on Missouri law, where petitioners have already lost, but rather must find an unenumerated US Constitutional right. The Court must find the right to die under these circumstances, which must be the right to kill because of these circumstances. (Nancy cannot kill herself, someone will have to do it.) Furthermore, somewhat contrary to logic and perhaps furnishing a paradoxical precedent, the right to kill must probably be found in the Fourteenth Amendment which says: (just the opposite of what petitioners seek) "...nor shall any State deprive any person of life...". It is poor public policy to find unenumerated rights in Amendments which enumerate rights exactly opposite to the

unenumerated right. It looks too much like tea leaves and crystal balls.

On information and belief after a good faith search, no state defines nutrition and hydration as medical care, treatment or therapy. The states, many of which have legislated in this area since the AMA decided to redefine nutrition and hydration, instead of going along with the AMA, go along with the medical dictionaries. Dorland's Illustrated Medical Dictionary, 23rd Edition, defines "medical" as: "Pertaining to medicine or to the treatment of diseases." Medicine" is defined as: "1. Any drug or remedy. 2. The art or science of healing diseases; especially the healing of diseases by the administration of internal remedies." "Care" is not defined and presumably is not a medical term. "Therapy" is defined as: "The treatment of disease;

therapeutics". "Treatment" is defined as: "The management of a patient for the purpose of combatting disease or disorder".

Insofar as relates to the circumstances of this case, no state living will law permits removal of medical care via substituted judgement when the removal is likely to hasten death; no state permits, authorizes or condones mercy killing or euthanasia, no state permits removal of anything which is likely to, much less certain to cause prolonged distress similar to the way Nancy Cruzan may be killed by this Court; no state permits removal of comfort care (and being killed by thirst as Nancy Cruzan may be killed is not comfortable); no state permits even voluntary euthanasia, much less involuntary euthanasia, etc, etc. Yet this Court is

being asked to force all states to do all these things and much more allegedly because of an unenumerated Federal Constitutional right to kill the unwanted biologically tenacious patient.

Who is correct? The prestigious medical alphabet groups and the media which agrees with them in large part, or the legislatures and laws of all the states where the media/medical position has been unanimously rejected? What weight should be given the part of the medical establishment asking for death? How reliable is their science? Could they be wrong herein?

WHY THE MEDICAL ESTABLISHMENT IS TOO FREQUENTLY WRONG

Let's see why they are sometimes wrong? Let's see what factors in the medical establishment make them likely to be wrong in cases of this type.

This amicus led those who corrected the entire medical establishment position on nursing babies about thirty years ago. Back when you and amicus were younger, nursing babies was disgusting and old fashioned. No self respecting establishment type woman would consider it because she was in the know. She had been advised by her establishment type doctor. Even those who did nurse (probably without letting any of their friends know) would supplement or quit after a reasonable time such as three months. Now many women nurse two years and nurse exclusively for six months.

What the medical establishment of those days overlooked was the fact that not nursing was robbing many women of one of the greatest purely feminine pleasures, was making large numbers of babies unnecessarily allergic, was

killing some babies and adversely affecting the health of many others. Why, as it might relate to this case, did the doctors err? The evidence was there, but substantially all of them failed to think for themselves. The fad put blinkers on their eyes, and they were effectively blind. Only a doctor or someone under similar time pressure can appreciate the temptation for a doctor to cut corners and go along with the fads. This amicus and a few of his patients founded the La Leche League which led the revolution. The nursing revolution succeeded via women teaching doctors, not vice versa.

When we examine the history of medicine, we find far too many occasions when the medical establishment was wrong because substantially all doctors cut the corner, did not think for themselves, and went along with the fad. Among these are

the practice of bleeding. A study of medical history shows there never was any substantial evidence for bleeding, as of course there could not be. Apparently one doctor with a dominant personality tried it out of desperation on a patient he could do nothing else for, and unfortunately for everyone but the patient, he recovered. You can guess the rest. Soon leaches were on the cutting edge of technology. (If you did not groan at the pun, you are too tired to continue reading.) Last century, obstetrical practices among midwives were far safer than among physicians because physicians did not take time to consider the massive evidence known to many mothers and nearly all midwives. As a result, many thousands of women needlessly died.

We do not have to look at last century for disgusting examples of

medical establishment errors. Consider the recent natural child birth controversy. How many marriages would have been saved if the husband had shared with his wife the most sexual experience of her life, giving birth, and had made it the most intimate experience of their lives? How many fathers did not properly bond to their children because the doctor would not let him into the delivery room? How many mothers did not properly bond to their children because their doctor felt the only good mother at birth is a mother so doped up she will think birth is a terrible experience (because she cannot reasonably assist and will later suffer for days due to the anesthesia)? The fad conquered all and the average doctor could not even conceive that many women could feel so good after birth they would want to nurse their child and be able to

walk with reasonable limits and go home the day of delivery. They could not see the evidence because of the fad. They kept it the old way because of the fad. It was women flocking to the few OBs and hospitals willing to permit natural childbirth and hurting the pockets of the others that caused the revolution, not the medical establishment.

Justices are wise to limit briefs or this old doctor would spend more pages on similar examples of medical establishment stupidity and arrogance.

Why does each generation's medical establishment which should be aware of the history of the follies of their predecessors fall into the same trap, only with their own unique follies?

Have the thousand most important people in the ABA and the various bar associations the past generation been

typical of other attorneys? Of course not.

When we look at how the medical establishment is self chosen, we note that it is not representative because of other factors.

The average doctor starves through his twenties and finally, heavily indebted, starts earning money at an age some youth may feel is to old to really enjoy it. What he does next is work long hours at his (or her) practice because he enjoys it and enjoys the money. In addition, he may have about $1000.00 per day overhead which he has to work all morning to cover. If he has a family, he has abused them by working the required long hours during school, post school and post school slave labor, before he ever started earning substantial money. Is the average doctor going to take additional

thousands of hours from his precious time just to become a leader of a medical association? Of course not. Only extremely politically motivated doctors do it. The only way to justify spending that amount of time is the expectation of return. But what return? For many, perhaps most who begin to be very active in associations, a major return is the power to do good as they see it by acting as a public representative of other physicians. What is sought is a type of political power.

What type of cream rises to the top and determines the side to favor with a brief? To rise to the top of a medical association, one must go through the chairs. This means that to advance, one must not be displeasing to those residing in the chairs above. This in turn means that one must not espouse views strongly

opposed by those above. This is why fads such as anti nursing, leaches, doped up motherhood, etc, can control the associations representing a profession that is basically scientific. An important position becomes popular with the powers to be and those lower do not advance if they oppose the position. The error develops an irresistible momentum for a while. The medical association establishments are inbred because they are chosen by those preceding them in the job in the same way the Cardinals of the Catholic Church are chosen by the Pope, but without any claim of divine guidance.

WHY REVERSAL WOULD BE HARMFUL

Because their profession touches life and death so intimately, physicians for millennia have been tempted to play you know Who. The greatness of Hippocrates and the durability of his oath derive from Hippocrates recognizing this

temptation and wording his oath to protect physicians from themselves. The AMA right to kill position and what they seek herein has a long and inglorious history. Before Hippocrates, the medicine man was skilled in the use of certain techniques and herbs. He knew the likely result if certain herbs were taken. Some would help heal certain maladies, some would kill. The medicine man did both. When the doctor came to visit, the patient could only hope he came to cure, not kill. Often one died, it was felt, because one was doomed by another who paid off the medicine man to do the job. Part of the greatness of Hippocrates was his challenging the beliefs that spirits, etc caused diseases and that doctors should both heal and kill. The early Christian physicians took a version of the Oath which omitted belief in Greek

Gods, and the Oath has pretty much stood the test of time until this century. Those societies where doctors did not take it were changed relatively quickly, as history goes and replaced by societies where the doctors did take the oath. I fear this predicts something about the future of Western Civilization.

As the Court already knows, the Oath was taken until relatively recently in America. As the memory of the Nazi experience faded, so did respect for the Oath which became controversial as certain doctors began to see advantages in destroying the wall Hippocrates built between killing and curing doctors. Euthanasia became less offensive and abortion became popular with some. The Oath said something many of these doctors did not want to hear. Those, such as abortionists, wanting to remove the Oath

were more motivated than the rest of the doctors. The Oath was discarded, probably as a symptom of the discarding of respect for the traditional Judeo-Christian ethic.

The result has been unhappy. Of course society is so complex, one can generate rationalizations for the disaster relating to family life which threatens to destroy Western Civilization. Occam's razor seems to indicate, however, that destruction of respect for the traditional Judeo-Christian ethic is probably closely associated with and is probably the main contributing cause for the destruction of society we are undergoing.

If this is true, reversing this case will further this destruction.

Is destruction too strong a term? Parts of Western Europe are farther along

than America. We find many major cities where a majority of the children have immigrant Moslem parents. In the US, the percentage having parents born in Mexico is greater than when we took the Southwest from Mexico. The massive immigration into the developed western world is necessary because these nations are not reproducing themselves. It appears that whatever the future brings into the western nations, it will be very different from the past Western Civilization and will partake very heavily of those Moslem nations from whom the immigrants come. I do not claim or believe the Moslems are inferior, but I do believe the culture they will impose, great as it is, is inferior in important ways to the Judeo Christian culture.

The change is likely to be far greater than many expect because of the

massive problems arising out of this Court's attack on traditional values via the Right to Privacy and other decisions. What we have now is a situation where the person not strong in the Judeo Christian tradition has less than an even chance of making a good marriage. Instead of true love, our Court/media imposed society gives our youth a greater than even chance of a life long relatively serious sexually transmitted disease. It may seem exciting when you are young, but this old doctor feels it is a poor trade. Compared to a generation ago, we have three times as many children (and about 60% of black children) born out of wedlock with all the disadvantages by now obvious in that state of birth. We have enormous welfare rates with the related problems. Old non producers cost far more to society than the young not yet able to work. Thanks in

part to this Court's invented abortion right, tens of millions of new workers were killed before birth and will never work, so that the social security and medical systems will possibly be crushed by the ratio of elderly to workers in just one generation, causing a tremendous economic pressure similar to the economic pressure which was a contributing factor in the much criticized Nazi euthanasia program. We will have pressure for an economic war between the retired and the workers.

Fifty sexually transmitted diseases rage compared to five when I became a physician. Tens of millions are infected. The chances of being infected are high enough to take much of the joy from one night stands. They cost many billions annually in treatment costs, and far more in indirect costs. The deaths from them

are now a substantial percentage of the deaths from all our wars and soon (unless AIDS is cured) will exceed the deaths from all our wars. AIDS has killed over 60,000, and 50,000 more diagnosed with the symptoms will soon be dead. 10,000 or more lives are being taken annually by one sexually transmitted disease the average person has not even heard of.

This Court's superlegislative Right to Privacy and related decisions do not operate in a vacuum. Another factor which works with Court invented rights to simultaneously victimize and "educate" America is the media.

Young people are subjected to pressures we never faced. The media makes America, and in fact the entire Western World swim in their ocean, and it is a strange ocean where a lot of little fish become ill or are killed. Please see in

the Appendix infra: "Hollywood and America: The Odd Couple" which is a survey from Smith College, Linda S Lichter, S Robert Lichter and Stanley Rothman previously published in numerous places, including Public Opinion Magazine. I know of no criticism of its accuracy.

The people who dominate the media use their power to reshape America in their own image which is close to the image defined by this Court's opinions which attack the traditional Judeo Christian ethic. The image is as follows: Nixon received 17% and 15% of their votes, McGovern 82% and Reagan 20%. 91% strongly agree that a woman has a right to decide on abortion while 20% feel homosexuality is wrong. 7% are regular church goers.

Why are those dominating the media so far out of step with the rest of

America?

For the same reason those who dominate the AMA and other similar organizations are out of step with many other physicians. Few start in the media at the top. You have to go up the chairs. If you displease those on top, you will never join them. There are not two parties which alternate appointing supreme justices of the media. It is more analogous to one party nations where those reaching for the high levels agree with those already there, or pretend to.

The extreme position of the media powers illustrates and indicates by analogy why the AMA and similar groups can be dominated by extreme non representative view points. Power seekers go up the chairs. People disagreeing politically have the same chance to advance while maintaining their opinions

as a Moslem or atheist has to be Pope.

The contrary argument in this case is that the opposing briefs are objective and based on knowledge. What knowledge? What can medicine say about the PVS? Not much. They are obviously not vegetables in spite of the misdescriptive name which may have been chosen more for connotation and for political reasons (pro euthanasia) rather than scientific reasons. What we do with them is a legal, moral, ethical religious, problem more than the typical medical problem. The doctor cannot help many of the PVS yet, although there is optimism that this is changing substantially for the better. The doctors expressing killing opinions about them do so for more non medical than medical reasons. They do not need the doctor to survive. The care most receive can hardly be called medical.

Now, just when hope first appears on the horizon in the success of physical, chemical, hormonal, electrical and other stimulation, now when for the first time there is promise of a substantial cure for many of them, we are to find an unenumerated Constitutional Right to kill them (for their own benefit we mendaciously claim).

Doctors become doctors to cure. They become discouraged when they cannot cure, so their judgement to kill has been influenced by emotions and should be considered accordingly.

CONCLUSION

The AMA is out of step with the legislatures on both the abortion and this issue and is likely to be wrong on both for the same reason.

Respectfully submitted,

ROBERT L SASSONE, Attorney for Amicus

HOLLYWOOD AND AMERICA: THE ODD COUPLE

By Linda S. Lichter, S. Robert Lichter

and Stanley Rothman

APPENDIX p1-30

This essay is part of a larger study of American social and political elites conducted under the auspices of Smith College, The Research Institute on International Change of Columbia University and George Washington University. The Lichters are professors at GWU, and Rothman at Smith. This article first appeared in ***Public Opinion Magazine****.*

Conservatives and liberals harmonize on few issues, but they are, at least, equally vehement in criticizing television entertainment. On the liberal side, women and minority groups claim that television's unflattering portrayals of them perpetuate negative stereotypes.

Conservatives object to the loose morality which they view as undermining the traditional American values of family, hard work, and patriotism. And myriad groups, from the PTA to the National Institute of Mental Health, worry that pervasive television violence is breeding aggressive individuals or even criminals.

Disagreements over the political messages of television programs and their relation to the "politics" of their creators have been sharp, although little hard evidence exists to bolster either side. Typical of those who view television as a conservative voice is a researcher at the prestigious Annealing School of Communication who concludes, "The basic reality of the television world is the reality of the American middle class establishment; its morality is

the conventional and rigid Sunday-school morality of the middle class.[1]

For many who adhere to this line of thought, the personal politics of television writers and producers are similarly conservative or of small consequence because their product inevitably supports conservative values. In this view, "The production and manufacture of television drama are rooted to business interests in the United States. Consequently, the content must be produced by people who are either willing to suppress deep-seated dissident values or by people who are fundamentally in agreement with the system."[2]

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1 Larry Gross, "The Real World of Television," *Today's Education*, vol. 63, Jan./Feb. 1974, p. 86.

2 Muriel Cantor, *Prime-Time Television* (Beverly Hills, Cal.: Sage, 1980), p. 19.

On the flip side of this question, Michael Robinson writes that television programs reflect the liberal values of program creators on such topics as homosexuality, interracial marriage, and the social position of women and minorities.[1]

Similarly, Ben Stein claims that television has an antipathy toward "establishment figures" and an accompanying sympathy for the poor and minorities. Based on interviews with Hollywood writers and producers, he concludes that, "... the attitudes of the people who create television coincide almost exactly with the picture on television."[2]

Profiling Hollywood's Elite

Who are the creators of TV entertainment? What are their backgrounds?

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1 Michael Robinson, "Prime-Time Chic," *Public Opinion*, vol. 2, Mar./May 1979, pp. 42-47.

2 Ben Stein, *The View from Sunset Boulevard* (New York: Basic Books, 1975), p. 105.

What do they think about American society, and how do they react to the criticisms leveled against their product? To find out, we interviewed 104 of Hollywood's most influential television writers, producers, and executives, as part of a larger study of elite groups. Since formal titles mean little in this field, we constructed a sample based on reputation by asking industry "insiders" for the names of key people.

We selected only names on whose importance our sources were agreed. We eliminated those who had not been associated with the development, production, or selection of two or more successful prime-time series. The final list consisted of approximately 350 names, from which we sampled randomly. Of 172 individuals who were contacted, 104 (60 percent) agreed to be interviewed.

The 104 individuals interviewed represent the cream of television's creative community. The sample includes 15 presidents of independent production companies, 18 executive producers, 43 additional producers, 26 of whom are also writers, and 10 network vice-presidents responsible for program development and selection. The remainder gave such titles as executive story consultant, program director, and story supervisor. Among those surveyed are some of the most experienced and respected members of the craft. Many have been honored with Emmy Awards, and a few are household names. Most important, this group has had a major role in shaping the shows whose themes and stars have become staples of our popular culture.

Demographics

The social and personal backgrounds of the television elite are summarized in table 1. This group is populated almost exclusively by middle-aged white males.

Table 1

BACKGROUNDS OF THE TV ELITE

White	99%
Male	98%
From metropolitan area	82%
From northeast corridor	56%
Father voted Democratic	68%
Father graduated college	35%
Raised in Jewish religion	59%
College graduate	75%
Family income $200,000	63%
Political liberal	75%
Religion "none"	44%
Regular churchgoer	7%

By and large they represent an urban and cosmopolitan sector of society. Very few have roots in middle America, instead, they were raised in big cities on the east and west coasts. Seventy-three percent hail from either California or

the Boston-Washington corridor, with over one in three coming from New York state alone. Eighty-two percent grew up in large metropolitan areas, leaving fewer than one in five who made the fabled journey from small town America to Hollywood.

In many other ways, however, television's top creators have traveled far from the world of their youth. Relative to their parents (and to the average American), they are well educated, extraordinarily well paid, have adopted secular outlooks, and are politically very liberal.

They come from diverse socioeconomic backgrounds, although few were forced to start at the bottom of the ladder. Only 15 percent come from blue-collar backgrounds, and the largest number, 42 percent, say their fathers were businessmen.

A minority of their fathers, 47 percent, had some college training, and only 35 percent obtained a degree. When asked to rate their family's economic circumstances during their youth as below average, average, or above average, they were evenly divided, with about one-third in each category.

Not surprisingly, these writers, producers, and executives are much better educated than their parents. Over nine out of ten attended college, three-fourths received degrees, and 31 percent had some graduate training. These educational advances pale before the dramatic rise in their economic status. Of those who responded, one in four reported a 1981 family income in excess of half a million dollars, and almost two-thirds (63 percent) earned over $200,000. Only

4 percent reported incomes of less than $75,000.

The television elite have traversed considerable distances in their attitudes, as well as their circumstances. In the sphere of religion, they have moved toward a markedly more secular orientation. Ninety-three percent had a religious upbringing, the majority (59 percent) in the Jewish faith. An additional 25 percent were raised in some Protestant denomination, and the remaining 12 percent as Catholics. Currently, however, 45 percent clair no religious affiliation whatsoever, more than six times the number of those who were not raised in any religious tradition. This is also greater than the proportion who currently profess to any particular religion. Defections have occurred from all religions, so that only 38 percent now call

themselves Jews, 12 percent remain Protestants, and 5 percent have retained their Catholic faith. Moreover, most of those remaining affiliations appear to be purely nominal. Ninety-three percent say they seldom or never attend religious services.

Politically, the television elite are drawn from liberal and Democratic backgrounds. Whether or not their parents imparted their own commitments, a large majority of the television elite now consider themselves liberals and regularly vote Democratic. Seventy-five percent describe themselves as left of center politically, compared to only 14 percent who place themselves to the right of center. This contrasts sharply with the national picture. In a 1982 national poll, only 27 percent of the general public classified themselves as liberal, 32

percent termed themselves conservatives, and the remainder called themselves moderates. In response to similar poll questions over the past two decades, self-described conservatives have always outnumbered liberals, and the latter have never accounted for more than 29 percent of those questioned.

The television elite's ideological self-descriptions are reflected in their political behavior. Table 2 shows how they voted in presidential elections since 1968. In the past four elections, among those voting, Democrats outpolled Republicans by margins that never dropped below three to one and rose above five to one. No Republican presidential candidate received more than 25 percent of this group's votes. In 1972, Nixon racked up 62 percent of the vote nationwide, but among the television elite the

landslide flowed in the other direction. They supported McGovern by a margin of 82 to 15 percent.

In 1980, there were substantial defections from the Democratic ranks here as elsewhere, and Carter received only 50 percent of their votes. But the benefi

Table 2

PRESIDENTIAL VOTING RECORD OF THE TV ELITE: 1968-80

1968		
	Nixon	17%
	Humphrey	80%
1972		
	Nixon	15%
	McGovern	82%
1976		
	Ford	25%
	Carter	72%
1980		
	Reagan	20%
	Carter	49%
	Anderson	27%

Note: Three to four percent voted for minor party candidates

ciary was not Ronald Reagan, who polled only 20 percent of this group. Instead, the disillusioned Democrats switched to John Anderson, whose 27 percent total put him well ahead of Reagan.

Social and Political Attitudes

The television elite's liberal self-image and presidential selections are consistent with their attitudes on social and political issues as Table 3 reveals. We questioned them on four kinds of topics: economic issues, political and social authority, disadvantaged groups, and sex and morality.

In the realm of economics these wealthy liberals do not reject the private enterprise system, although many favor expansion of the welfare state. Seven out of ten believe that the government should substantially reduce the income gap between the rich and the poor, a

policy which would surely reduce their own incomes, and 44 percent think the government should guarantee employment to anyone who wants a job.

For most, however, economic liberalism does not shade over into radicalism. They support the private enterprise system that has been so good to them. Ninety-four percent support the notion that people with more ability should earn more: 81 percent reject public ownership of corporations; almost two-thirds believe less government regulation of business would be good for the country. Finally, over two out of three see the American private enterprise system as fair to workers.

Table 3

TV ELITE ATTITUDES ON SOCIAL ISSUES

	Strongly Agree	Agree	Disagree	Strongly Disagree
Economics				
Government should redistribute income	24%	45%	16%	14%
Government should guarantee jobs	8	37	26	30
Big corporations should be publicly owned	6	13	14	66
Private enterprise is fair to workers	18	51	25	6
Less regulation of business is good for U.S.	20	45	25	11
People with more ability should earn more	62	32	5	1
Political Alienation				
U.S. institutions need complete overhaul	8	35	28	29
Structure of society causes alienation	16	46	25	12
U.S. Legal system favors wealthy	39	37	16	8
Public officials don't care about average man	23	42	32	3
People in authority know best	0	18	39	43
Disadvantaged Groups				
Women are better off at home	0	8	17	76
Women should get preference in hiring	4	24	39	33
Blacks lack education to advance	28	45	20	7
Blacks lack motivation to advance	1	17	19	63
Black gains come at white expense	2	1	19	78
Blacks should get preference in hiring	4	39	32	25
Whites and non-whites should not marry	2	13	23	62
Discrimination can be ended	5	8	23	64
Poor people are victims of circumstance	13	48	31	8

	Strongly Agree	Agree	Disagree	Strongly Disagree
Sex and Morality				
Woman has right to decide on abortion	91	6	1	2
Homosexuality is wrong	5	15	31	49
Homosexuals should not each in schools	6	9	20	66
Adultery is wrong	16	33	32	19

Rebels With Causes

The television elite pledges allegiance to capitalism, but it is far more skeptical about the social and political institutions allied to this economic system. Three out of four say our legal system favors the wealthy, and nearly two-thirds believe that the very structure of American society causes people to become alienated from it. They are just as critical of those in positions of authority. Just under two-thirds agree that public officials are not interested in the average citizen, and 82 percent reject the notion that those in authority

know best. Almost half disagree strongly that one should defer to those in authority, and not a single person expressed strong confidence in authority.

Given their widespread rejection of both American social institutions and their guardians, one would suspect that many in the television elite would like to see substantial changes in our society. In fact, a substantial minority of 43 percent endorses a complete overhaul of American institutions. In short, their acceptance of the economic system is tempered by a deep-set alienation from the social and political system.

If the television elite's political alienation contrasts sharply with their moderate economic views, it is quite consonant with their social liberalism. They express strong support for the social advancement of women and blacks, and

the picture society as unfair to blacks, whose underprivileged position is seen as no fault of their own. Such strong sentiments notwithstanding, a majority reject preferential hiring as a means of assisting women's or black's advancement. Seventy-two percent reject this type of affirmative action for women, and 57 percent reject it for blacks. Perhaps reflecting the difference between sentiment and policy, most are not sanguine that social discrimination can be ended. Only 13 percent believe that racial and religious discrimination can be ended in their lifetimes.

The television elite's social liberalism is also evidenced by their views on sex and morality, another focal point for television's critics. On such issues as abortion, homosexual rights, and extramarital sex, their views diverge sharply

from traditional values. Ninety-seven percent believe that a woman has the right to decide for herself whether to have an abortion; even more striking, 91 percent agree strongly with this position. Four out of five do not regard homosexual relations as wrong. Only five percent feel strongly that homosexuality is wrong, compared to 49 percent who disagree strongly. An even greater proportion, 86 percent, support the rights of homosexuals to teach in public schools. Finally, a majority of 51 percent refuse to condemn adultery as wrong. Moreover, the majority of those who feel strongly about this issue take a permissive stance; only 17 percent strongly agree that extramarital affairs are wrong. From this evidence, it would be difficult to overestimate the clash of values when television's creative community confronts

fundamentalist Christian critics like the Moral Majority or the Coalition for Better Television.

Different Strokes

These findings suggest that the television elite's political alienation is rooted in social rather than economic issues. It is their social liberalism that most clearly distinguishes them from the general public. To probe this topic more deeply, we inquired into their hopes for the future, as well as their assessments of the present. We asked them to choose goals for America to pursue for the next decade, by selecting the most important and least important from the following six choices.

1. Maintaining a high rate of economic growth
2. Making sure that this country has strong defense forces

3. Seeing that the people have more say in how things get decided at work and in their communities

4. Progressing toward a less impersonal, more humane society

5. The fight against crime

6. Progressing toward a society where ideas are more important than money.

For the past decade, political scientist Ronald Inglehart has been presenting such choices to subjects in America and Western Europe. He classifies economic growth, national defense, and crime as traditional "instrumental" values. A humane society, participation, and placing ideas above money, on the other hand, are "expressive" or "post-bourgeois" values that are gaining strength among new elite sectors in post-industrial societies. In most major social groups, "post-bourgeois" choices still represent a minority position. Among leading journalists we interviewed, a very liberal

elite on most issues, only one in three chose "post-bourgeois" goals as most important. Corporate executives, a more conservative elite, rejected such goals by an eight-to-one margin. In sharp contrast, the television elite prefers "post-bourgeois" or "expressive" values over "instrumental" ones by almost two-to-one, as Table 4 indicates.

The television elite's strong preferences for expressive over instrumental social goals explain why many feel alienated from traditional social and political institutions – their value orientation is fundamentally different from that of the general public.

The elite seeks new directors as well as new directions for American society. We asked them to rate ten

Table 4

TV ELITE CHOICES AND GOALS FOR AMERICAN SOCIETY

Goals	Most Important	Least Important
National defense	5%	37%
Economic growth	19	13
Fight crime	13	11
Humane society	43	6
Ideas, not money	14	14
Community participation	5	20
Totals		
Instrumental	37	61
Expressive	63	40

leadership groups in terms of the influence each wields over American life. Then we asked them to rate the same groups according to the amount of influence each should have. The groups include such traditional forces in American life as business and labor, government

agencies, the military, and religion, along with such rising contenders as the news media, blacks, feminists, intellectuals, and consumer groups. We calculated the average influence rating assigned to each group on a scale ranging from "1" meaning very little influence, to "7" representing a great deal of influence.

The findings confirm the impression that the television elite is deeply dissatisfied with the direction our society is taking and would like to alter it in profound ways. They perceive American's power structure as dominated by the media and business, who finish in a virtual tie at the top of the heap. When this group is asked for their preferences, the picture changes dramatically. The new kingpins would be consumer groups and intellectuals, followed by blacks and femi-

nists. Business and the media fall from the top to the middle of the pack. Lowest in the pecking order would be government, religion, and the military. It would be hard to imagine a more thorough indictment of the social order. (See Table 5).

Table 5
TV ELITE RANKS OF INFLUENCE AMONG LEADERSHIP GROUPS

Perceived Influence	Preferred Influence
1. Media	1. Consumer groups
2. Business	2. Intellectuals
3. Government agencies	3. Blacks
4. Unions	4. Feminists
5. Military	5. Business
6. Consumer groups	6. Media
7. Religion	7. Unions
8. Intellectuals	8. Government agencies
9. Blacks	9. Religion
10. Feminists	10. Military

Our results seem all of a piece. Television creators emerge as upholders of the "new liberalism" that surfaced among upper status cosmopolitan groups in the 1960s. The crucial question is whether this perspective influences their work. In short, does this social portrait of television's creators tell us anything about their artistic output? Ultimately, this can only be determined by systematic analysis of television entertainment. For example, we found that businessmen are mainly bad guys in TV entertainment; this is consistent with the attitudes held by the people who create these shows.[1] But much work remains before we will have an overall picture of

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[1] For some initial findings, see L. Lichter, R. Lichter, and S. Rothman, "How Show Business Shows Business," *Public Opinion*, vol. 5, Oct./Nov. 1982, pp. 10-12; L. Lichter and R. Lichter, *Prime-Time Crime* (Washington, D.C.: the Media Institute, 1983).

television's social message. In the interim, we asked members of the creative community what they thought about the social implications of their work. Do they see themselves as pure entertainers, or as educators, or even social reformers? Do they necessarily disagree with complaints that sex or violence permeate prime-time?

The results shown in Table 6 are clear and consistent. The television elites believe they have a role to play in reforming American society. They reject conservatives' criticisms of TV entertainment, while giving credence to liberals' complaints of television violence. First, television's creators make clear their preference for realism over escapist fantasy. Fully three out of four believe that TV should portray society realistically, and those who feel

strongly agree by more than a three-to-one margin. *Moreover, two out of three believe that TV entertainment should be a major force for social reform. This is perhaps the single most striking finding in our study. According to television's creators, they are not in it just for the money. They also seek to move their audience toward their own vision of the good society.*

Table 6

TV ELITE ATTITUDES TOWARD TV ENTERTAINMENT

	Strongly Agree	Agree	Disagree	Strongly Disagree
TV should promote social reform	21%	45%	21%	13%
TV should be realistic	37	39	12	12
TV is too critical of traditional values	1	11	32	56
There is too much sex on TV	10	20	32	38
There is too much violence on TV	21	38	27	14

Thus, they reject the criticism that television is too critical of traditional values by an eight -to-one margin. A majority strongly disagree with this argu-

ment, and only one person strongly endorses it. Similarly, 62 percent disagree that there is too much sex on TV, as fundamentalist Christian groups have charged. By contrast, nearly 60 percent agree that television is too violent.

In sum, they view TV entertainment largely as we might expect on the basis of their social attitudes. Like many other liberal, cosmopolitan, upper status Americans, they believe sex is less of a problem than violence on television, and *they see the medium as a source of needed social reform. The difference is that they are the creative force behind that very medium.*

NO 88-1503
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

NANCY BETH CRUZAN, BY HER PARENTS AND CO-GUARDIANS, LESTER L AND JOYCE CRUZAN
Petitioners,
v.
DIRECTOR OF MISSOURI DEPARTMENT OF HEALTH, AND ADMINISTRATOR OF THE MISSOURI REHABILITATION CENTER AT MT. VERNON,
Respondents,
v.
THAD C. McCANSE, GUARDIAN AD LITEM,
Respondent.

Affidavit of mailing of amicus brief copies, Rule 28.2

State of California }ss.
City of Santa Ana, County of Orange }

Robert L Sassone, being first duly sworn on his oath deposes and says:

Robert L Sassone is a member of the bar of the United States Supreme Court admitted October 26, 1971. To his knowledge, on October 11, 1989, within the particular time and permitted time for serving of said amicus brief pursuant to Rule 28.2, he deposited in the United States Mailbox at Santa Ana, CA 92701 pursuant to Rule 28.2 with first class postage prepaid 40 copies of the attached amicus brief in the present case properly addressed to the Clerk of the United States Supreme Court and three copies of said amicus brief to each party addressed as follows:

WILLIAM L WEBSTER
ATTORNEY GENERAL
C/O ROBERT PRESSON
PO BOX 899
JEFFERSON CITY, MO 65102

THAD McCANS, ESQ
400 GRANT ST
CARTHAGE, MO 64836
C/O FLANAGAN, McCANS & LANSLEY

WILLIAM H COLBY, ESQ
SHOOK, HARDY & BACON
1200 MAIN ST
KANSAS CITY, MO 64105

_____
ROBERT L SASSONE, Affiant,

Subscribed and sworn to before me on
October 11, 1989,

_____
Lawrence D Sassone, Notary Public